

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

Elijah James Gaddy, #17859-058,)	
)	Civil Action No. 3:08-1569-SB-JRM
Petitioner,)	
)	
vs.)	REPORT AND RECOMMENDATION
)	
John J. LaManna, Warden,)	
)	
Respondent.)	
_____)	

Petitioner, Elijah James Gaddy (“Gaddy”), is an inmate at FCI-Edgefield serving a sentence of 248 months for drug and weapons convictions imposed in the Western District of North Carolina. He filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 on April 15, 2008. He alleges that his right to due process was violated during an institutional disciplinary proceeding and that the Federal Bureau of Prisons (“BOP”) abused its discretion by failing to review his efforts to challenge the disciplinary decision because they were untimely.

Respondent filed a motion for summary judgment on June 12, 2008. Because Gaddy is proceeding *pro se*, an order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975) was issued on June 20, 2008 explaining to Gaddy his responsibility to respond to the motion for summary judgment. He did not file a response, and the undersigned issued an order on August 12, 2008 advising him that if he did not notify the Court within fifteen (15) days that he wished to continue this action, the undersigned would recommend that it be dismissed with prejudice. The Court received a motion from Gaddy on August 26, 2008 seeking an extension of time in which to respond



to the motion for summary judgment. Gaddy's motion was granted and he was ordered to respond on or before October 3, 2008. No response has been received from Gaddy.

The undersigned concludes that Gaddy has abandoned this action. It is, therefore, recommended that this action be dismissed with prejudice pursuant to Rule 41(b), F.R.Civ.P.

A handwritten signature in black ink, appearing to read 'J. McCrorey', is positioned above a horizontal line.

Joseph R. McCrorey
United States Magistrate Judge

Columbia, South Carolina

December 15, 2008

The parties are referred to the Notice Page attached hereto.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).